HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 290 of 2000

Decided on: 24.9.2007

State of Himachal Pradesh .....Appellant.

Versus

Sanjeev Kumar and another .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No.

For the appellant: Mr.J.S. Guleria, Law Officer.

For the respondents: Mr.Ajay Kumar, Advocate.

Deepak Gupta, J (Oral):

This is an appeal directed against the judgment of learned Additional Chief Judicial Magistrate, Nahan in Criminal Appeal No.66/2 of 1999/98, decided on 1.1.2000, whereby he has acquitted the accused of having committed offences under Sections 341, 342, 504 and 506 read with Section 34 of the I.P.C.

The prosecution case in a nut shell is that on 20.10.1998, complainant Rameshwar Dass was returning after having bath in a "*bowri*". He had some litigation with his younger brother Sohan Lal. According to the complainant Rameshwar Dass, when he was returning after having the bath, Hakmi Devi wife

---

[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

of Sohan Lal, Sanjeev Kumar, son of Sohan Lal and Shashi Bala, daughter-in-law of Sohan Lal accosted him and entered into an altercation with him. Thereafter, they took him inside a cow shed and beat him up with leg and fist blows. He raised a hue and cry and his nephew Happy (Mukesh Kumar), wife Surmukhi Devi and Babli Devi, tenant of his brother, came on the spot and rescued him. He thereafter lodged the FIR. Investigation was carried out. The accused were charged. They pleaded not guilty and claimed trial. After trial, the accused have been acquitted. Hence the present appeal.

PW-2 Rameshwar Dass has supported the version made in his complaint. However, there are minor discrepancies in what was stated by him in the complaint and what was stated by him in the court. It is admitted by Rameshwar Dass that houses of Pritam Singh and Ram Charan are situated to the close of the house of his brother, where he is alleged to have been confined and beaten up.

PW-3 Babli Devi is the star witness. According to her, she reached the spot around 12.30 p.m. and Rameshwar Dass had been confined inside the cow shed. She further states that she was informed by Happy (Mukesh Kumar) that his *Tau* (uncle) had been confined by the accused and was being beaten up. She stated that she went alongwith Happy and then Happy broke open the door. When they opened the door, they saw that the accused Hakmi Devi and Sanjeev Kumar were present and the clothes of Rameshwar Dass were smeared with cow dung. They raised hue and cry and other inhabitants of the Mohalla gathered there. In cross examination, Babli has admitted that she has lodged a complaint under Section 354 IPC against the brother of the accused. She also admitted that the complainant Rameshwar Dass and his wife Surmukhi (PW-7) were

examined as witnesses by her in that case. This fact was also admitted by Rameshwar Dass, complainant, in his cross examination.

PW-4 Mukesh Kumar gives an entirely different version. According to him, at 12.30 p.m., he was sleeping in his house and one Satya Devi came to him and informed him that his uncle is being beaten up. He went to the cow shed and heard the noise. The cow shed was bolted both from inside and outside. This fact was not stated by him in his statement under Section 161 Cr.P.C. Thereafter, according to this witness, he went to the house of Rameshwar Dass and then again went to the house of the accused. Then one Vijay Kumar came and opened the bolt. This fact also not recorded in his statement under Section 161 Cr.P.C. He further stated that till the unbolting of the bolt, no person had reached the spot and when the bolt was opened, he was the only person on the spot and other than him only Vijay Kumar and no other person reached on the spot. He contradicts the version of Babli Devi according to whom she and Mukesh Kumar had gone to the cow shed together, whereas Mukesh Kumar states that he went alone and only Vijay Kumar was present on the spot. Vijay Kumar was not examined.

Another important factor is that all the witnesses admitted that a large number of persons had collected on the spot. If that was true, then why did the police not examine any independent witnesses? All the witnesses who were associated in the investigation were those witnesses who had either filed cases against the accused or had appeared as witnesses against the accused. There is sufficient material on the record to show that there is long standing ill will between two sides. The prosecution has not come out with correct version and the true genesis of the dispute has not been disclosed.

In view of the aforesaid discussion, the judgment of the learned Trial Court giving benefit of doubt to the accused cannot in any manner be said to be incorrect. The appeal is, therefore, without any merit and is accordingly rejected.

(Deepak Gupta),
Judge.

September 24, 2007
(TILAK)